the Legislature is the agent of the people for the purposes of law making; that this would be in effect shifting the burden of responsibility which the Constitution meant to fix on it, and giving to the people the ultimate legislative authority definitely surrendered by them at the time of the adoption of the Constitution.

The difference between the majority and Mr. Justice Holmes, whose opinion is the most suggestive among those of the minority, seems to be double, lying partly in the different tests of constitutionality adopted, and partly in the question whether or no such acceptance by the people is legislation. While the majority, on the one hand, reject the idea as one not contemplated by the Constitution, Mr. Justice Holmes, on the other, accepts it as one not forbidden. The majority say that the actual enacting legislative force is the vote of the people. Mr. Justice Holmes points out that if such a law "does go into effect, it does so by the express enactment of the legislative body." He agrees that the people may not legislate without an amendment of the Constitution, but does not accept the conclusion that the enactment of laws may not be made to depend on their consent.

It would seem that his may be considered the sounder view. The analogy is stronger to a law which depends, as one may, upon the happening of a future event, or to an agent going back to his principals for instructions and yet performing the duties of his agency himself, than it is to a judge turning cases over to his private secretary for decision, or a governor giving his clerk the power to pardon. And it does not seem a dangerous or unwise use of legislative authority; or, indeed, an arrangement which would have been looked upon by the founders of the Constitution as improper or inexpedient.

"FLOATABLE STREAMS" — COMMERCIAL POWER OF CONGRESS. — In *Gwaltney* v. *Scottish Lumber Co.*, 16 S. E. Rep. 692, there is an interesting discussion by the Supreme Court of South Carolina of the public rights over running streams, though the actual decision turned on a point of small importance. The court lay down the doctrine that, in addition to the generally recognized class of navigable waters, there exists another kind of streams over which the public have rights. These the court call "floatable streams," which, while not navigable by vessels or even smaller craft, are yet of use to the public "in bearing the products of mines, forest, and tillage of the country they traverse to mills and markets." Such streams are public highways, and the rights of the riparian proprietors are subject to an easement in favor of their free use for those purposes to which they are adapted.

The rule here stated is supported by a number of decisions (*Lancey* v. *Clifford*, 54 Me. 487; *Buchanan* v. *Grand River, etc. Co.*, 48 Mich. 364; *Shaw* v. *Oswego Iron Co.*, 10 Oregon, 371), which, while varying more or less as to where the line should be drawn between the concurrent rights of the public and the riparian proprietors, all recognize these streams not technically navigable, but navigable for logs, as public highways. Gould on Waters, 2d ed. sec. 107.

The inherent reasonableness of this doctrine makes it probable that it would be generally followed; and this suggests a possible application of that tremendous piece of machinery, the commercial power of Congress. It has indeed been hitherto generally assumed that the jurisdiction of

Congress only extended to strictly navigable waters, and that when it was impossible, from natural or artificial causes, for ships or boats to go upon a stream, the jurisdiction of Congress did not cover it. *Com.* v. *King*, 150 Mass. 221. But if floatable streams are public highways, they may well be, and often are, highways over which passes interstate and foreign commerce, and as much subject to the control of Congress as railways, canals, or telegraph lines. Doubtless, until Congress does legislate, the States may do so, and require men floating logs or other produce to obey such regulations as are necessary for the public good. A State has as good a right to enact that logs shall only be floated in rafts (*Harrigan* v. *Conn. River Lumber Co.*, 129 Mass. 580) as to require all locomotive engineers to be examined for color-blindness. *Nashua, etc. R. R.* v. *Ala.*, 128 U. S. 96. But if Congress chose to make a general law for the government of floatable streams in so far as they are channels for interstate and foreign commerce, it would seem there would be very little doubt of its constitutionality. There is here another instance of the great scope of the power to regulate commerce vested in the national government, a power which, if the people once get the idea of using it to attain their ends, will extend in a hundred directions beyond what has hitherto been dreamed of.

LIQUOR SALOON A NUISANCE *per se.* — Another restriction has been placed upon the liquor traffic by the decision of the Indiana Supreme Court, in the recent case of *Haggard* v. *Stehlin*, 35 N. E. Rep. 997, to the effect that a duly licensed and properly conducted liquor saloon is a nuisance *per se.* The plaintiff was the owner and occupier of a dwelling-house in a residential portion of Indianapolis. A business block was erected on an adjoining lot, and the defendant opened in it the saloon in question. The plaintiff thereupon brought suit to recover damages for the injury caused by the proximity of the saloon; and it was admitted that the property of the plaintiff had been damaged both for selling and rental purposes. The license granted to the defendant, by the board of commissioners of the county, was set up as a defence, to which the plaintiff demurred. There was no complaint of any improper conduct, or violation of the law, or anything injurious to health or offensive to the senses; so the question came squarely before the court, whether this lawful business, carried on in a lawful manner, could be a nuisance; and the court decided affirmatively, Howard, C. J., and Hackney, J., dissenting.

In a question of nuisance it has been considered as well settled that the injury, annoyance, and inconvenience are regarded rather than the particular trade or occupation from which these resulted; and also that the injury inflicted must be the result of some tangible physical interference on the part of the defendant with the ordinary comforts of life. 1 Wood, Nuis. §§ 2, 3. Were these legal propositions disregarded in the present case? There are two grounds that may be gathered from the discussion of the court upon which the decision may possibly rest. The first is that the business is of such a character that it is impossible to rid it of those attendant circumstances and conditions which of themselves constitute a nuisance because of their necessarily injurious results. 2 Wood, Nuis. 3 ed. § 809. Such a position might be taken where the occupation complained of was itself illegal, and where specific allegations of discomfort or annoyance were unnecessary, as in the case of brothels (11 Md. 128)